

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEMENICO LAFLUER,  
Petitioner,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA,  
Respondent.

Case No. [20-cv-08656-VC](#) (PR)

**ORDER OF DISMISSAL WITH  
PREJUDICE**

On December 28, 2020, Deminico Lafluer filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C § 2254. The petition indicated that Lafluer appeared to be out-of-custody when he filed it. On February 26, 2021, the court issued an order for clarification from Lafluer explaining that a federal court has jurisdiction only of habeas petitions filed when the person is “in custody” at the time the petition is filed—that is, incarcerated or under some restriction on freedom of movement as a result of court-ordered supervision. *See* 28 U.S.C. §§ 2241(c), 2254(a); *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (a habeas petitioner must be in custody under the conviction or sentence under attack at the time the petition is filed). The order directed that Lafluer file a declaration, within 28 days of the order, explaining how he was in custody on December 8, 2020 and to submit with his declaration an exhibit or exhibits showing that he was in custody. The order further stated that if Lafluer did not file such a declaration within 28 days, the petition would be dismissed with prejudice for lack of jurisdiction.

More than 28 days have passed and Lafluer has not filed the required declaration or communicated with the court in any manner. Therefore, the petition is dismissed with prejudice

for lack of jurisdiction.

A certificate of appealability is denied. “Jurists of reason would not find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The clerk shall enter judgment and close the file.

**IT IS SO ORDERED.**

Dated: June 30, 2021

A handwritten signature in black ink, appearing to read 'VCH', is positioned above a horizontal line.

VINCE CHHABRIA  
United States District Judge